

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2552 of 1995

To

FIRST APPEAL No 2559 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 & 2 Yes : 3 to 5 No

STATE OF GUJARAT

Versus

HEIRS OF DECEASED NANA JIVA NAYAKA

Appearance:

First Appeal Nos.2552 to 2559 of 1995

Mr.P.G.Desai, learned G.P. with Ms.Ami Yagnik,
learned Asst.G.P. for the appellants.
No one has appeared on behalf of the respondents
despite service in any of these matters.

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

Date of decision: 22/09/98

COMMON ORAL JUDGEMENT (Per M.R.Callan,J)

1. These eight First Appeals have been filed under S.54 of the Land Acquisition Act (for short 'Act') against the common order passed by the Extra Assistant Judge, Panchmahals at Godhra in Land Acquisition Reference Nos.292 to 299 of 1990 under S.18 of the Act. Whereas all these Appeals are directed against the common order deciding all the eight References, we propose to decide all these Appeals by this common order.

2. The Government of Gujarat decided to acquire certain lands of village Valiya, the details of which have been set out in para 2 of the impugned common judgment dated 31.3.93 passed by the Extra Assistant Judge, Panchmahals at Godhra, for Pannam Dam Project as was proposed by the Executive Engineer of Pannam Scheme Division by order dated 5.12.72. This proposal was accepted and accordingly Notification under S.4 of the Act was issued on 29.7.73 and further Notification under S.6 was also published on 22.12.75. Individual notices to the persons interested in the land in question had also been served. The claimants appeared before the Land Acquisition Officer and claimed Rs.4000 per acre for Jirayat land and Rs.5000 per acre for Kyari land. They produced the sale instances before the Land Acquisition Officer. The Land Acquisition Officer after hearing all the parties passed the Award dt. 28.3.76 fixing the market value of the acquired land ranging from Rs.400 to Rs.900 per acre. Aggrieved from this common Award, the claimants/heirs of the claimants applied to the Collector for Reference under S.18 of the Land Acquisition Act and all the eight References have been decided by the Extra Assistant Judge, Panchmahals at Godhra by the impugned order dt.31.3.93 and a Schedule has been attached with the judgment showing the additional amount of compensation awarded to the claimants and the claimants have been held to be entitled to recover the costs on the additional amount from the other side and to pay the costs on the claim disallowed to the opponents in one set. The operative part of the order passed by the Extra Assistant Judge, Panchmahals at Godhra reads as under:-

"1. All the References are partly allowed.

2. The claimants in all the References are entitled to compensation at the rate of 0.96 ps. per sq.meter. So far as Kyari land are concerned, at the rate of 0.70 Ps. per Sq.meter. So far as New Kyari land is concerned at the rate of 0.64 Ps. per Sq.meter, for Jirayat land, 0.10 Ps. per Sq.meter for Kharaba land including the amount already awarded Solatium at the rate

of 30% per annum on the total amount awarded, plus amount 12% per annum on the market value of the land from the date of the Notification dated 18.6.73 till the date of award, and interest at the rate of 9% per annum on the excess amount i.e. additional amount from the date from which the possession of land under acquisition is taken till the date of payment of the excess amount in court and if the said amount is not deposited within one year from the date of taking over possession of the land under acquisition, at the rate of 15% per annum from the date of expiry of one year and onwards on the excess amount which has not been paid in to the court before expiry of the said date. If the land is of new tenure 5% be deducted from that compensation."

3. In the order, by which the References have been decided, the learned Extra Assistant Judge has noticed in Para 5 of the order that opponent State had filed its common reply in all these References contending vide written statement Exh.7 that all these References were time barred and claimants remained silent for more than 17 years, that they had not given proper explanation for the delay. Therefore, all these References are required to be rejected as time barred. This plea has been dealt with by the Extra Assistant Judge in Para 9 of the impugned order. The argument raised on behalf of the claimants has been noticed that the present References were within the period of limitation, the Land Acquisition Officer had not sent the contents of the Award and the observations of the High Court in other Land Acquisition Cases. The Award came to be passed on 28.3.76, but there is no evidence on record to show that contents thereof were sent to the claimants by the Collector, there is no evidence on record to show that the notices under S.12(2) of the Act were served upon the claimants. The Extra Assistant Judge had further mentioned that the perusal of the certified copy of the Award produced at Exh.19 shows that certified copies were obtained on 4.5.89 and the References were presented before the Collector on 26.5.89 and it is not proved by the other side that there was a delay on the part of the claimants. On the contrary, there is sufficient evidence that the Collector had failed to give the notices of the Award or that the claimants were present on the date of the declaration of the Award. Considering the dates of the obtaining the certified copies, the References are within period of 2 weeks. It has also been mentioned that it is not disputed that the High Court of Gujarat had passed an order directing the Land acquisition Officer, Panchmahals at Godhra to furnish the certified

copy of the Award to the claimants on the basis of a writ petition filed by them and, therefore, also the References were within the period of limitation and, therefore, this contention raised on behalf of the State was not acceptable.

4. Looking to the facts of the present case, which are available on record, we do not find it necessary to go into the other contentions raised on behalf of the appellants because we find that these Appeals can be disposed of only on the ground that the References were time barred. Having heard the learned Government Pleader and having gone through the record, we find that:

- (a) The Award was passed on 28.3.76.
- (by) The possession was taken on that very day.
- (c) The compensation had already been duly received.
- (d) Certified copy was obtained on 4.5.89.
- (e) References were presented before the Collector on 26.5.89.

It is, therefore, clear that the References were presented after a period of more than thirteen years.

5. Application under S.18 of the Act is to be made within six weeks from the date of the Collector's Award if the person making it was present or represented before the Collector at the time when he made the Award. In other cases, it has to be filed within six weeks of the receipt of the notice from the Collector under S.12(2) or within six months from the date of the Collector's Award, whichever period shall first expire. Thus, under proviso (b) to S.18(2) the maximum period of limitation is six months from the date of the Collector's award. In this view of the matter, even if it is taken that the persons making References were not present or represented before the Collector at the time when he made the Award, the proviso (b) to S.18(2) was applicable for the purpose of computing the limitation and accordingly even if it is assumed in favour of the claimants or their heirs, as have been noticed by the Extra Assistant Judge, that no notice under S.12(2) of the Act was given by the Collector, the alternative given in the later part of proviso (b) to S.18(2) prescribes six months period from the date of the Collector's award and thus six months period from the date of 28.3.76 expired on 28.9.76. In such a fact situation, whether the contents of the Award were sent to the claimants by the Collector or not, the absence of evidence to show that the notices under S.12(2) had been served upon the claimants, the fact that the certified copy of the Award was obtained on 4.5.89 and that it was made available to them on a direction

being given by this Court, are of no consequence. The Extra Assistant Judge had rejected the plea of delay urged on behalf of the State of Gujarat on the aforesaid grounds, which are not at all tenable in the eye of law and on the basis of such grounds, the References could not be treated to be within the period of limitation. It appears that the Extra Assistant Judge lost sight of the later part of the proviso (b) under S.18(2). There is no provision for condonation of delay and as such there is no question of entertaining the plea that the certified copy was not made available and that it was obtained on 4.5.89 and, therefore, the References presented before the Collector on 26.5.89 were within limitation. Section 18(2) is reproduced as under:-

"18.(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

The alternative part under proviso (b) to S.18(2) that, 'or within six months from the date of the Collector's award, whichever period shall first expire' leaves no room of doubt that any Reference after a period of six months from the date of the Award has to be treated as time barred and such an incompetent or invalid Reference cannot be considered and decided on merits. In the instant case, there is a gross delay of 13 years. We are fortified in taking this view by a decision of the Supreme Court in the case of *The Officer on Special Duty v. Shah M.C.*, reported in 1996(2) GLR 626 wherein the Supreme Court has held in no uncertain terms that the Collector is not a Court and an Application for Reference must be made within the time prescribed in S.18(2), the Collector has no power to condone the delay in making Application for Reference and even a Court cannot entertain invalid Reference. It has been further held that the Collector being not a Court cannot condone the delay in making the Application for Reference.

6. For the reasons, aforesaid, the impugned order dated 31.3.93 passed by the Extra Assistant Judge, Panchmahals at Godhra cannot be sustained in the eye of law. The same is hereby quashed and set aside. All these eight Appeals succeed. No order as to costs.

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